

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.217 OF 1987

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL TRANSPORT SERVICE
VERSUS
RAMSINGH BAPUJI

Appearance:

MR SM MAZGAONKER FOR PETITIONER
MR DF AMIN FOR RESPONDENT

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision:8/10/1999

C.A.V. JUDGMENT

#. By this writ petition under Article 226 of the

Constitution of India, the petitioner - Ahmedabad Municipal Transport Service, challenges the award of the Labour Court, Ahmedabad, dated 9.7.86 in Reference (LCA) No.648 of 1983, under which the order dated 12th October 1982 of the petitioner dismissing the respondent-workman from services, is set aside and it is ordered that if the respondent-workman has not superannuated, he be reinstated by the petitioner on his original post in continuity of services. Further direction was given to the petitioner to withhold at least four increments of the respondent-workman for a period of one year from the date of publication of the award.

#. Mr.Mazgaonker, learned counsel for the petitioner contended that the respondent-workman was chargesheeted for grave and serious misconduct of misappropriation of petitioner's money. The charges levelled against the respondent-workman were proved in the domestic inquiry and the disciplinary authority ultimately considered it to be a case where he has to be dismissed from services and accordingly the order has been passed. The Labour Court has accepted as a fact that the domestic inquiry held against the respondent-workman was fair and reasonable. The Labour Court has also accepted that the misconduct for which the concerned workman was chargesheet has been proved. After accepting of the fairness of the inquiry and the charges proved no interference should have been made by the Labour Court as it is a case where the respondent-workman has indulged in activities of misappropriation of money of the petitioner. It has next been contended that only in case where the penalty given by disciplinary authority is excessive or harsh or disproportionate to the guilt, the Labour Court could have interfered therein but not in all the cases as a rule. The award of the Labour Court is illegal as it has been given on the grounds which are not available to the Labour Court. Lastly, it is contended that even it is not the say of the Labour Court that the punishment given to the workman was highly excessive. Merely by stating that it is disproportionate unless reasons are to be recorded for holding so, no interference could have been made.

#. Mr.Amin supported the impugned order.

#. Perusing the special civil application and having given thoughtful considerations to the submissions made by learned counsel for the parties, I am satisfied that this petition deserves acceptance.

#. The respondent-workman was chargesheeted for grave

and serious misconduct of committing fraud and misappropriation of money of the Corporation. While he was working as a clerk - helper, he had paid wages for over time wages to one Allabaksh, Driver, though in fact he had not done any over time work. A sum of Rs.1,558/= was paid towards the over time work for the alleged period from May 1981 to July 1981. It is a case where this amount has been shared by respondent-workman and the Driver - Allabaksh to the extent of 50-50. So it is a clear case of grave and serious misconduct and rightly, the chargesheet has been given to the workman-respondent and inquiry was conducted wherein it is found as a fact that he has committed the fraud and misappropriation of this amount. In fact, that driver had not done any over time and in collusion with the driver, this amount has been shared by respondent and driver. The Labour Court has found the domestic inquiry to be fair and reasonable and further a finding of fact has been recorded that the misconduct for which the workman was charged, has also been proved. After recording these findings of fact, there would have been little scope available to the Labour Court to interfere with the penalty given to the workman concerned for proved misconduct. It is no more res-integra that what penalty should have been given to the workman concerned for proved misconduct is a sole domain, concern and discretion of the disciplinary authority and the appellate authority. Interference of the Courts with the penalty given for proved misconduct to the concerned workman is only available where it is found to be totally disproportionate or altogether uncalled for. Fruitfully, here reference may have to the two decisions of the Apex Court in the case of State of U.P. v. Samrendra Kishore, reported in JT 1994(1) SC 217 and in the case of B.C.Chaturvedi v. Union of India, reported in JT 1995(8) SC 65.

#. It is true that Section 11A of the Industrial Disputes Act, 1947, empowers the Labour Court in an appropriate case to substitute its own penalty for the penalty which has been given to the concerned workman for proved misconduct by the disciplinary authority but it is not a rule that in all the cases, where the workman has approached to it, interference has to be made by it. I find from the award of the Labour Court that it has proceeded with conception and approach that where a workman has approached to it, he has to be granted some relief. That is not the law, nor it is the requirement of Section 11A of the Industrial Disputes Act, 1947. This award is nothing but a reward to the workman for committing such a grave and serious misconduct of misappropriation and fraud with the petitioner. It is a

case where it cannot be said by any stretch of imagination that the penalty of dismissal given to the respondent-workman is harsh or disproportionate to the guilt. If in such matters, lenient view is taken, which has been taken in this case, it will encourage the employees to indulge in such activities. The workmen should not go with this feeling that they can do whatever grave and serious misconduct and even if they have been punished by disciplinary authority, the Labour Court is there to protect them. It is unfortunate in the country that corruption is rampant. All efforts are to be made by all concerned to eradicate the same. In furtherance of that object and purpose, the Labour Court should not have such a liberal and lenient approach even in the matter where the concerned workman has been chargesheeted for misconduct of misappropriation of money of the petitioner. Money of the petitioner is a public money and all the employees working with the petitioner have accountability for the same. This award clearly exhibits an example that the Labour Courts are deciding the matter very liberally and lenient view is being taken in the cases of serious and grave misconduct. It is not a charity which has to be distributed by the Labour Court. The case has to be decided in accordance with law and where the law does not permit to take such lenient view in the case where concerned workman has been chargesheeted with the misconduct of misappropriation of money of the petitioner, the Labour Court should not have stretched its power as conferred upon it under Section 11A of the Industrial Disputes Act, 1947, to the extent what has been in this case. Stretching of powers conferred upon it under Section 11A of the Industrial Disputes Act, 1947, beyond the limit within which it is permissible will ultimately result in chaos. In a case of misconduct of misappropriation and embezzlement of public money, the only appropriate punishment is dismissal or removal from service of the delinquent employee/officer. Reference here fruitfully may have to the decision of the Apex Court in the case of Narayan Dattatraya Ramteerthakar v. State of Maharashtra & Ors. reported in (1997)1 SCC 299. It is a case where the award of the Labour Court certainly falls within the category of perverse award and it cannot be allowed to stand.

#. In the result, this special civil application succeeds and the same is allowed and the award of the Labour Court, Ahmedabad, dated 9.7.86 in Reference (LCA) No.648 of 1983 is quashed and set aside. Rule is made absolute. No order as to costs.

(S.K.Keshote, J.)

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